Office Supreme Court, U.S.
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WM. R. STANSBURY
Clerk

No. 177

Supreme Court of the United States

OCTOBER TERM, 1926.

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY, - - - - - - Petitioner,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

CHARLES G. MIDDLETON,
EDWARD P. HUMPHREY,
WILLIAM W. CRAWFORD,
Counsel for Petitioner.

HUMPHREY, CRAWFORD & MIDDLETON,
Of Counsel.

Louisville, Kentucky,
January 26, 1927.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

RECEIPT.

Counsel for respondent, Atlantic Coast Line Railroad Company, hereby acknowledges receipt of notice of filing of the within petition for *certiorari*, with a copy of the petition and printed record, this January 26, 1927, at Louisville, Kentucky.

HELM BRUCE,
Counsel for Respondent.

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Supreme Court of the United States

OCTOBER TERM, 1926.

STANDARD OIL COMPANY, INCORPORATED IN KENTUCKY, - - - - - - - - - *Petitioner,*

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, *Respondent.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SIXTH CIRCUIT.

To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner hereby respectfully applies for a writ of *certiorari* addressed to the Circuit Court of Appeals for the Sixth Circuit directing it to certify to this Honorable Court for review and determination the record in a certain cause numbered 4691, styled Atlantic Coast Line Railroad Company, Appellant, against Standard Oil Company, Incorporated in Kentucky, Appellee.

By its judgment therein rendered on December 17, 1926, said Circuit Court of Appeals affirmed in part and modified in part a judgment entered in favor of the petitioner by the United States District Court for the Western District of Kentucky.

The petitioner applies for a writ of *certiorari* from said judgment in so far as it *modifies* the judgment of the District Court. The respondent herein has likewise applied for a writ of *certiorari* in so far as the judgment of the Circuit Court of Appeals *affirms* the judgment of the District Court.

The question presented in the case was whether petitioner's petroleum products moving from Tampa, Port Tampa and Jacksonville, all in the State of Florida, to interior points in the State of Florida should pay intrastate rates or interstate rates. The suit was filed in the District Court for the Western District of Kentucky by the petitioner, the grounds of Federal jurisdiction being diversity of citizenship. The petitioner sought reparation and an injunction enjoining the respondent from enforcing any rate other than the lawfully published intrastate rate and the District Court adjudged that the traffic was intrastate traffic and that the petitioner was entitled to the relief sought.

The respondent appealed, and the Circuit Court of Appeals split up the traffic as between the cities of Port Tampa and Jacksonville, holding substantially that the traffic from Port Tampa was interstate and that the traffic from Jacksonville was intrastate. The District Court was directed to modify its decree accordingly.

The petitioner challenges the ruling directing the District Court to split up the traffic as hereinabove indicated. The petitioner takes the position that all of the traffic is intrastate and asks that the decree of the District Court be affirmed in its entirety.

GROUNDS FOR APPLICATION.

The petitioner asks for this writ upon the following grounds:

FIRST. Because the decision of the Circuit Court of Appeals in so far as it holds part of the traffic involved to be interstate traffic conflicts with three decisions of this Court—

a. Atlantic Coast Line R. R. Co. v. Standard Oil Company of New Jersey, 12 Fed. (2d Series) 541, in which case the Circuit Court of Appeals for the Fourth Circuit held that traffic in all substantial respects similar to that in the case at bar was intrastate traffic and in which case a petition for writ of *certiorari* was denied by this Honorable Court on October 18, 1926. (See Supreme Court Journal, Monday, October 18, 1926, at page 57).

b. Seaboard Air Line Ry. Co. v. State of Florida, *ex rel.* R. Hudson Burr, *et al.*, in which case the Supreme Court of Florida held that the same traffic as is involved in the case at bar was intrastate traffic and in which case a petition for a writ of *certiorari* was denied by this Honorable Court on November 23, 1926. (See Supreme Court Journal, November 23, 1926, at page 97).

c. Atlantic Coast Line R. R. Co. v. State of Florida, *ex rel.* R. Hudson Burr, *et al.*, in which case the Supreme Court of Florida held that the same traffic as is involved in the case at bar was intrastate traffic and in which case a petition for a writ of *certiorari* was de-

nied by this Honorable Court on November 23, 1926. (See Supreme Court Journal, November 23, 1926, at page 97.)

SECOND. Because the decision of the Circuit Court of Appeals in the case at bar in so far as it holds part of the traffic involved to be interstate traffic conflicts with the decision of the Circuit Court of Appeals for the Fourth Circuit in the case of Atlantic Coast Line R. R. Co. v. Standard Oil Co. of New Jersey, 12 Fed. (2d Series) 541, hereinabove referred to.

THIRD. Because the decision of the Circuit Court of Appeals in the case at bar in so far as it holds part of the traffic involved to be interstate traffic conflicts with the decisions of the Supreme Court of Florida in the two cases of State of Florida, *ex rel.* R. Hudson Burr, *et al.*, v. Seaboard Air Line Ry. Co., and State of Florida, *ex rel.* R. Hudson Burr, *et al.*, v. Atlantic Coast Line R. R. Co., 109 So. 656 (not yet officially reported), in which cases the Supreme Court of Florida held that the very traffic involved in the case at bar was intrastate traffic.

FOURTH. Because the decision of the Circuit Court of Appeals in the case at bar in so far as it holds part of the traffic to be interstate traffic conflicts with other decisions of this Honorable Court applicable to the question presented, and involves a question of importance which is in the public interest to have decided by this Honorable Court.

Hamilton-Brown Shoe Co. v. Wolf Bros. & Co., 240 U. S. 251.

Magnum v. Coty, 262 U. S. 159.

A brief statement of the facts will disclose the error of the Circuit Court of Appeals in holding that part of the traffic involved was interstate traffic.

BRIEF STATEMENT OF FACTS.

The petitioner does a general retail and wholesale oil business in the State of Florida. It is not a producing company and buys its products delivered to it by boat at Port Tampa and Jacksonville, at which points it maintains large storage tanks, the capacity of which is 619,075 barrels. The petitioner has nothing to do with the movement by boat of the petroleum products to the Florida ports and only acquires title to the same as and when the petroleum products are delivered into its storage tanks. The capacity of the tanks is largely in excess of any vessel making delivery of petroleum products at the points named, the capacity of the tanks being some thirteen times as large as the largest vessel. The capacity of the tanks is made large for two reasons —first, because the petitioner endeavors to maintain at all times an adequate supply of petroleum products for Florida business, and, second, because the petitioner takes advantage of the market conditions in petroleum products and business beyond its current needs when it feels the markets on such products are low and stores its excess purchases in these tanks. The tanks, therefore, constitute far more than a mere unloading device or means of shifting petroleum products from water to rail transportation.

In addition to the storage tanks at the ports named, the petitioner has 123 bulk marketing stations at inland points, 165 drive-in service stations, approximately 410 delivery vehicles, approximately 5,000 dealer customers, and several hundred thousand retail customers. In other words, the petitioner has the usual equipment of oil companies carrying on a similar business, and conducts its business in the usual way.

The petroleum products remain in the storage tanks at the ports for varying lengths of time, depending upon the exigencies of petitioner's business. In times of intense business activity, products leave the tanks at the ports rapidly. At other times they do not so leave. The products may stay in the tanks for a week or two weeks or they may stay there for two months or three months, depending entirely upon the demands of the petitioner's local business in the State of Florida. The water movement of the products into the tanks has nothing to do with the rail movement from the tanks. The products come to a complete state of rest upon being pumped from the boats into the tanks, and contracts with railroad companies for movements by rail are made after the products reach a state of rest in the tanks. A single cargo of oil is broken up into many different shipments by rail, and no one can tell at the time a cargo is unloaded into how many rail shipments it will be broken up, nor to whom it will go, to what point it will go or when it will go. The only thing that can be said with certainty is that it will move as, when and where the exigencies of the petitioner's business require it to move. An activity in one section

of the State may create a large demand for the products entirely unanticipated when the products reach the port, and the slowing down in business activity, of course, has the opposite effect.

The petitioner pays local taxes to the State of Florida on all products on hand in its tanks on the Florida assessing days.

While the products are subject to no manufacturing process in the State of Florida at the ports, yet everything is done that is necessary to be done in handling petroleum products. However, a large amount of lubricating oil is barrelled after it comes into Florida—about 3,500 barrels per month at Jacksonville and about 600 or 700 barrels per month at Tampa (R. 58). No particular tanks are used for products going to any particular section (R. 80). Gasoline is pumped into the gasoline tanks, kerosene into the kerosene tanks and fuel oil into fuel oil tanks, and the gasoline, kerosene and fuel oil may go to one place or they may go to another.

Some thirteen per cent of all the products coming into Jacksonville are used in that city and some twenty or thirty per cent of those products are shipped in interstate commerce to Southern points in Alabama and Georgia, the latter shipments, of course, properly taking the interstate rate. There is, however, no separation made in the tanks at Jacksonville between any of the products moving in the various ways mentioned. All of the oil in one tank may be used in Jacksonville, or it may go to inland points of Florida, or it may go to

Southern points in Georgia or Alabama, depending upon the exigencies of petitioner's business.

None of the petitioner's products are use at Port Tampa. Some of them, of course, the record not disclosing the exact percentage, are used at Tampa, which is nine miles farther on and which is reached by rail on a regular switching or tariff charge not in controversy.

In addition to the storage tanks at Tampa and Jacksonville, the petitioner maintains two warehouses at the points named in which it carries an assortment of petroleum products, such as lubricating oil in cans, candles, stoves and the lubricating oil which it actually barrels at these points.

The facts in regard to petitioner's method of handling fuel oil are somewhat different from those in regard to the other products and special mention must be made of that branch of petitioner's business. The record discloses that ninety-five per cent of fuel oil comes into the State of Florida on contracts theretofore made for its sale. In other words, ninety-five per cent of the fuel oil is sold before it reaches a state of rest in the storage tanks. Other than that, however, the fuel oil is handled exactly as the other products. It comes into the ports in large steamers and is pumped into the tanks. It may stay there for a short time or a long time, depending upon the demands of business. It may go to one point or it may go to another. There is no allocation as to cargoes or parts of cargoes, as to any point in Florida to which it may go, as to the time it may move out of the tanks, or as to the person to whom

it may go. There is no certainty as to its destination at the time of its arrival. It is held in storage tanks to meet the demand. The only certainty is that at some time it will move out.

Summarized, the petitioner does in Florida a strictly local oil business. It keeps on hand in its storage tanks sufficient supplies to meet the demands of its Florida customers. Those demands are made in the course of a trade that is strictly intrastate. Indeed, for years prior to June 15, 1923, the railroads applied the intrastate rate to all of this traffic. Since that time and up to the time this Honorable Court denied the petition for writ of *certiorari* in the case in the Florida Supreme Court already mentioned, the respondent and some of the other Florida roads applied the interstate rate. The record does not disclose what rate the respondent has applied since the petition for writ of *certiorari* was denied in the case from the Florida Supreme Court. It should be said, however, that the record does disclose that the Florida East Coast Railroad, the Southern Railway Company and the Louisville & Nashville Railroad Company have consistently applied the intrastate rates to all of this traffic.

Upon these facts the District Court held that the business done by the petitioner in the State of Florida was purely a local business and that the transportation to serve such business was intrastate transportation at intrastate rates. The Circuit Court of Appeals, however, divided the traffic and held part of it to be interstate traffic and the rest of it intrastate traffic. Of

course, the practical confusion from such a holding would be material and neither of the parties litigant is satisfied with that decision.

The Circuit Court of Appeals held that the fuel oil, gasoline and kerosene traffic from *Port Tampa* is interstate traffic and that the lubricating oil from Port Tampa moved in intrastate traffic, but that the gasoline, kerosene and lubricating oil moving from *Jacksonville* to Florida points was intrastate traffic, and that, as to the fuel oil from Jacksonville, the record was obscure and not sufficient for a satisfactory determination.

As we read the opinion of the Circuit Court of Appeals, the basis for this distinction between Port Tampa and Jacksonville is that no petroleum products are used at Port Tampa and that a substantial percentage of petroleum products are used at Jacksonville; that, accordingly, the stoppage at Port Tampa is a stoppage *in transitu*, and that any movement thereafter by rail is a continuation of the water transportation.

We submit that the distinction is not well taken. The petroleum products come to rest at Port Tampa just as definitely as they come to rest at Jacksonville, and the movement out from Port Tampa is just as distinct and separate a movement as the movement out from Jacksonville. The stoppage at both places is for *bona fide* business reasons of the petitioner, without which stoppages it could not conduct its business.

The distinction which the Circuit Court of Appeals makes was condemned in the case of General Oil Co. v. Crane, 209 U. S. 211, where the oil company had a bat-

tery of tanks at Memphis, Tennessee, and labeled some of the tanks "Oil Already Sold in Arkansas, Louisiana and Mississippi" and labeled others "Oil to be Sold in Arkansas, Louisiana and Mississippi," and then contended that the oil in the tanks so labeled was still moving in interstate commerce and that the delay in Memphis was merely for the purpose of reshipment; that the interstate transit was not ended, but only temporarily interrupted. This Court said, however, on page 230, that the oil had reached the destination of its first shipment and was held there, not in necessary delay or accommodation to the means of transportation, but for business purposes and profit of the company, that the interstate commerce had ended, and that the property was subject to the State tax laws of Tennessee.

We submit, therefore, that the distinction made by the Circuit Court of Appeals is not sound and that all of the traffic is intrastate.

BRIEF DISCUSSION OF GROUNDS FOR THIS APPLICATION.

That part of the decision of the Circuit Court of Appeals holding some of this traffic to be interstate traffic directly conflicts with the decisions of this Court and of the Circuit Court of Appeals for the Fourth Circuit. The case of Atlantic Coast Line Ry. Co. v. Standard Oil Co. of N. J., 12 Fed. (2d Series) 541, is exactly analogous to the case at bar. All the large oil companies doing business in states along the seaboard have adopted substantially the same methods. A read-

ing of the opinion of the Court in the case from the Fourth Circuit will disclose that the Standard Oil Company of New Jersey's method of doing business in North Carolina was in all substantial respects similar to that used by the petitioner. In the North Carolina case the Standard Oil Company of New Jersey had large tanks at Wilmington, North Carolina, and brought its products into that port by boats. It concentrated its products in large storage tanks at Wilmington and thereafter served its customers in the State of North Carolina from these tanks. There may be minor differences, but substantially the New Jersey Company carried on its business in North Carolina as the petitioner carries on its business in the State of Florida. The District Court in the North Carolina case held the traffic to be intrastate. The Circuit Court of Appeals in a very extensive opinion affirmed the decision of the District Court, and this Honorable Court denied a petition for writ of *certiorari*. Accordingly, the traffic in the North Carolina case has been held to be intrastate traffic by three Courts and we submit that there can be no doubt about the correctness of those decisions.

The Florida traffic is in all substantial respects similar to the North Carolina traffic and is intrastate traffic, and the ruling of the Circuit Court of Appeals for the Sixth Circuit holding part of it to be interstate traffic is in direct conflict with the decisions we have mentioned.

This view is doubly fortified when we come to consider the case from the Supreme Court of Florida which involved this very same traffic—State of Florida, *ex rel.* R. Hudson Burr, *et al.*, v. Seaboard Air Line Ry. Co. and Atlantic Coast Line R. R. Co., 109 So. 656 (not yet officially reported). There the Supreme Court of Florida held this very traffic to be intrastate traffic and this Court has denied a petition for writ of *certiorari* in that case, and, as we understand, has also denied a motion for rehearing on that application.

We submit that the question is a closed question and that the Circuit Court of Appeals for the Sixth Circuit was in error in failing to follow the North Carolina case and the Florida case just referred to.

There is no valid ground for distinguishing the fuel oil from other petroleum products. A fuel oil case was presented to the Interstate Commerce Commission—Washington Dehydrated Food Co. v. Great Northern Ry. Co., 102 I. C. C. 363, decided on September 22, 1925. The facts in that case were exactly similar to the case at bar regarding fuel oil, and the Interstate Commerce Commission held the traffic to be intrastate traffic.

This petition should be granted also on the authority of the case of Missouri v. Kansas Gas Co., 265 U. S. 298. In that case the Kansas Natural Gas Company purchased gas in Oklahoma and Kansas, transported it in pipe lines to Missouri and sold it there to distributing companies. This Court held that the first sale, that is the sale to the distributing companies, was in

interstate commerce, but that the subsequent sale of the smaller companies to the consumers constituted intrastate commerce. The Court said, on page 308:

> "* * * *With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to State regulation.* * * *" (Italics ours.)

And again, on page 309:

> "* * * *The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State* and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. * * *" (Italics ours.)

The quotations apply exactly to the case at bar. The essential nature of the petitioner's business is that of supplying on demand local consumers in Florida and that business is a local business.

As said by this Court in the case of Southern Pacific Co. v. Arizona, 249 U. S. 472, the question whether a shipment is in interstate commerce is a question of fact, and we submit the facts in the case at bar show conclusively that the petitioner's business in Florida is strictly intrastate business.

The Circuit Court of Appeals has erroneously held that part of the traffic is interstate. That ruling conflicts with the North Carolina case from the Circuit Court of Appeals for the Fourth Circuit and with other cases from this Court. Accordingly, the petitioner asks for a writ of *certiorari.*

On the other hand, the Circuit Court of Appeals has held that part of the traffic, that is, the part from Jacksonville, is intrastate traffic. That ruling is correct and does not conflict with other decisions. Accordingly, it is submitted that the respondent, which has asked for a writ of *certiorari,* is not entitled to the same.

Accordingly, your petitioner pleads that the judgment of the Circuit Court of Appeals in so far as it holds that part of the traffic involved is interstate is erroneous and this Honorable Court should require the case to be certified to it for its review and determination and for a modification of the opinion and judgment of the Circuit Court of Appeals in the respect mentioned.

WHEREFORE, your petitioner respectfully prays that a writ of *certiorari* may be issued out of and under the seal of this Court directed to the United States Circuit Court of Appeals for the Sixth Circuit, commanding said Court to certify and send to this Court on a day certain to be therein designated a full and complete transcript of the record and all proceedings in the Circuit Court of Appeals in said case, styled Atlantic Coast Line Railroad Company, Appellant, versus Standard Oil Company, Incorporated in Kentucky, Ap-

pellee, Number 4691, to the end that said case may be reviewed and determined by this Honorable Court, as provided in Judicial Code, Section 240, and that this Honorable Court modify the opinion and judgment of the Circuit Court of Appeals in so far as the same holds part of the traffic to be interstate traffic, and that your petitioner may have such other and further relief or remedy in the premises as to this Court may seem appropriate and in conformity with said Judicial Code and that the said judgment of the Circuit Court of Appeals, in so far as it reverses and modifies the judgment of the District Court of the United States for the Western District of Kentucky, be reversed, and that the judgment of said District Court in said case be affirmed by this Honorable Court.

And your petitioner will ever pray.

CHARLES G. MIDDLETON,
Counsel for Petitioner.

EDWARD P. HUMPHREY,
WILLIAM W. CRAWFORD,
Of Counsel.

STATE OF KENTUCKY,
COUNTY OF JEFFERSON. } ss.

Charles G. Middleton, being duly sworn, says that he is one of the counsel for the petitioner, Standard Oil Company, Incorporated in Kentucky, that he has had charge of this case for the petitioner from the inception thereof; that he prepared the foregoing petition, and that the allegations thereof are true as he verily believes.

CHARLES G. MIDDLETON.

Subscribed and sworn to before me by Charles G. Middleton this 26th day of January, 1927. My commission expires March 16, 1930.

ALICE JACKSON,
Notary Public, Jefferson County, Kentucky.

Office Supreme Court, U. S.
FILED
OCT 3 1927
CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

OCTOBER TERM, 1927.

No. 176.

ATLANTIC COAST LINE RAILROAD COMPANY, Petitioner,

vs.

STANDARD OIL COMPANY (Incorporated in Kentucky), - - - - - - - - - Respondent.

No. 177.

STANDARD OIL COMPANY (Incorporated in Kentucky), - - - - - - - - - Petitioner,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, Respondent.

BRIEF FOR STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), RESPONDENT IN No. 176 AND PETITIONER IN No. 177.

CHARLES G. MIDDLETON,
EDWARD P. HUMPHREY,
WILLIAM W. CRAWFORD,
Louisville, Ky.,
Counsel for Standard Oil Company, (Incorporated in Kentucky), Respondent in No. 176, Petitioner in No. 177.

September 23, 1927.

WESTERFIELD-BONTE CO., INCORPORATED, LOUISVILLE, KY.

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Supreme Court of the United States

OCTOBER TERM, 1927.

No. 176.

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner,*

vs.

STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), - - - - - - - *Respondent.*

No. 177.

STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), - - - - - - - - *Petitioner,*

vs.

ATLANTIC COAST LINE RAILROAD COMPANY, *Respondent.*

BRIEF FOR STANDARD OIL COMPANY (INCORPORATED IN KENTUCKY), RESPONDENT IN No. 176 AND PETITIONER IN No. 177.

OFFICIAL REPORT.

This case is reported below in 16 Fed. (2d) 441. The District Court's opinion will be found in 13 Fed. (2d) 633.

The case came to this Court on petitions for certiorari to the United States Circuit Court of Appeals for

the Sixth Circuit. A petition for certiorari was filed by the Atlantic Coast Line Railroad Company February 2, 1927. Likewise on the same date a petition for certiorari was filed by the Standard Oil Company (Incorporated in Kentucky).

On March 21, 1927, both petitions were allowed and the case is now here upon its merits.

In view of the fact that two petitions for certiorari were filed and allowed, the parties will be hereinafter referred to for the sake of clarity as the Railroad Company and the Oil Company.

JURISDICTION.

The judgment which the parties ask to be reviewed was entered December 17, 1926, by the Circuit Court of Appeals for the Sixth Circuit (R. 132).

The Oil Company is a corporation organized under the laws of the State of Kentucky. It is a resident of the Western District of said State. The Railroad Company is a corporation organized under the laws of the State of Virginia, but is engaged in business in the State of Kentucky and has an agent in that State for the service of process. The amount involved in the controversy exceeds $3,000. The ground of Federal jurisdiction is diversity of citizenship. Judicial Code Sections 24 and 51. The jurisdiction of this Court is conferred by Judicial Code Section 240, as amended.

The Oil Company filed its bill in the United States District Court for the Western District of Kentucky against the Railroad Company. The bill charged that

the Railroad Company transports the Oil Company's petroleum products from Tampa, Port Tampa and Jacksonville, Florida, to interior points in that State; that prior to June 15, 1923, the Railroad Company charged State rates for that traffic, but that since said date the Railroad Company has charged interstate rates for the traffic handled. The bill alleged that the traffic was intrastate traffic and that the State rates only should be applied; further that the Railroad Company was wrongfully imposing the interstate rates. Accordingly the bill prayed for an injunction against the application of the wrongful interstate rates and against the application of any rate other than the lawfully published intrastate rate, and further prayed for an accounting.

The Railroad Company, in its answer, denied that the traffic was intrastate traffic and alleged that it was interstate traffic. The sole question involved therefore is as to the character of this traffic, whether it is intrastate or interstate.

The District Court held that the commerce involved was State commerce and that the proper rates to be applied were the intrastate rates. Accordingly, it entered a decree enjoining the future charging of any rate other than the intrastate rate.

The Railroad Company appealed from the decree to the Circuit Court of Appeals and the operation of the decree was suspended pending the appeal. The Circuit Court of Appeals reversed the judgment of the District Court in part and affirmed it in part, holding substantially that the traffic from Port Tampa to in-

terior points in Florida was interstate and that the traffic from Jacksonville was intrastate. Both parties then sought a review of the judgment of the Circuit Court of Appeals by certiorari. The Oil Company contends that all of the traffic is intrastate traffic, and the Railroad Company, that all of the traffic is interstate traffic.

STATEMENT OF THE CASE.

The Oil Company is a Kentucky corporation doing business in some of the southern States, including Florida. It is not a producing company. It buys its supplies of petroleum products upon the open market, largely from the Standard Oil Company of New Jersey at Tampico, Mexico, and from the Standard Oil Company of Louisiana at Baton Rouge, Louisiana. The Oil Company does a general retail, wholesale and jobbing oil business in the State of Florida. The products which it sells come into the Florida ports by vessels from points out of the State—the fuel oil from Tampico, Mexico, and the other products from Baton Rouge, Louisiana. In order for the Oil Company to carry on its business it is necessary for it to have storage facilities for the petroleum products so coming into the Florida ports and it is further necessary for it to maintain at all times supplies of petroleum products adequate for its business. Accordingly, it maintains in Florida at Port Tampa and Jacksonville, large batteries of storage tanks and a warehouse at each of said points.

The capacity of the storage tanks at the points named is 619,075 barrels. In these tanks the Oil Company stores petroleum products sufficient to meet the demands of its Florida business and supplies that business from the tanks. The Oil Company purchases its supplies delivered to it in the tanks at the ports and has nothing to do with the movement of the vessels carrying the oil. These vessels are owned or chartered by the companies selling the oil to the Oil Company. When a vessel arrives at port the Oil Company's agent is notified and the oil is thereupon pumped from the vessel into the storage tanks. The Oil Company then for the first time takes possession, settles for the petroleum products on the basis of the gallonage actually pumped into the tanks and then holds the products subject to the demands of its Florida business. The capacity of the storage tanks is some thirteen or fourteen times as large as the cargo capacity of any ship used by the selling companies carrying the petroleum products into the Florida ports.

The Railroad Company has nothing to do with the boat movement. There is no through rate nor any joint water and rail rate. The boats are private carriers. After the petroleum products come to rest in the storage tanks at the ports their future movement depends entirely upon the exigencies of the Oil Company's business. The stay of the petroleum products in the tanks is entirely indefinite. They may move from the tanks rapidly if business is brisk. They may remain in the tanks for a great length of time if the Oil Company's business is not active at that time. No

particular oil is destined for any particular point in the State of Florida and the only known destination of the petroleum products when they are loaded on the boat is the Florida port. The products may stay in the tanks for one week or they may stay there for two months or three months and sometimes longer. Furthermore, no particular cargo of oil is allocated to any particular tank or to any particular shipping point in the interior of Florida. All of these things depend upon the exigencies of the Oil Company's business. No one knows or can tell at the time a cargo of oil is pumped into the tanks at the ports where it will go, or to whom, or into what number of railroad shipments it may be broken up (R. 48, 49, 50, 51 and 113).

The Railroad Company has no notice as to when a cargo of oil comes into port and indeed has nothing to do with the petroleum products until the Oil Company makes a definite contract of carriage with it. The oil may stay in the tanks three months before it is shipped out by rail or it may stay there only one week, but in any event no contract of shipment of the oil from the tanks is made with the Railroad Company until after the oil has been in the tanks for a varying length of time. It is simply known in a general way that the oil will leave the tanks by rail sometime, but where or when it will go is not known at the time the cargo is unloaded.

Special mention must be made of lubricating oil and fuel oil, as these two petroleum products are handled somewhat differently from the kerosene and gasoline. Lubricating oil at Port Tampa is pumped di-

rectly from the steamers into tank cars and is thereupon hauled to the city of Tampa, about nine miles distant, on a regular switching or tariff rate, which rate is not involved in the controversy. There the lubricating oil is pumped from the tank cars into storage tanks, some of the oil being barreled and shipped out from the city of Tampa to other Florida points in the barrels. Some of it is used in the city of Tampa. Some leaves the city of Tampa in tank cars and some in smaller quantities. About six hundred barrels per month are barreled at Tampa. Of course the lubricating oil comes into Port Tampa in tank steamers (R. 60).

At Jacksonville the Oil Company's docks are located at what is called the St. Johns River Terminals and there, in addition to large storage tanks for fuel oil, gasoline and kerosene, the Oil Company also has storage tanks for lubricating oil. Accordingly, the lubricating oil is pumped from the steamer into the lubricating oil storage tanks. Thereafter it is pumped out of these storage tanks into tank cars and hauled to Kings Road Station in Jacksonville, which is about two and one-half miles distant from St. Johns Terminal. This movement is on a regular switching charge and the rate is not involved in this controversy. After the lubricating oil reaches Kings Road, it is put into tanks with other lubricating oil at that point and then distributed through the State of Florida. A large amount of lubricating oil is barreled at Jacksonville, about 3,500 barrels per month (R. 60, 61).

The facts in regard to fuel oil are somewhat different from all the other products handled by the Oil

Company. This difference lies in the fact that approximately 95 per cent of the fuel oil that comes into the State of Florida is sold on contracts theretofore made for its sale. In other words, the Oil Company makes contracts of sale for 95 per cent of the fuel oil that it brings into the State before the fuel oil comes into the State. Other than that, however, fuel oil is handled exactly as the other products. It comes in in large tank steamers. It is pumped at the port into large storage tanks. It may stay there for a short time or a long time, depending upon the demands of the Oil Company's business. It may go to one point or it may go to another. There is no allocation as to cargoes or parts of cargoes as to the particular points in Florida to which it will go, or as to the time it may move out of the tanks, or as to the person or company to whom it may go. There is no certainty as to its destination at the time of its arrival. It is fair to state, however, that nearly all of the fuel oil goes into a certain district in Florida, called the Bone Valley District. It is used in the fertilizer business, of course as fuel to get the rock out, which is crushed and of which a fertilizer is made. A small percentage of the fuel oil is held subject to current demands. The deliveries of fuel oil to Florida customers are very irregular. They are delivered on requirement contracts and the requirements depend upon the customers' business. It is necessary in handling the fuel oil to have large storage tanks and to have a large reserve supply of fuel oil on hand at all times (R. 121, 122, 123 and 124).

The Oil Company also maintains one warehouse each at Port Tampa and Jacksonville. In these warehouses it carries a varied assortment of products, such as lubricating oil in cans, candles, stoves and lubricating oil in barrels. Curiously enough, the Railroad Company applies the interstate rate to oil in barrels and applies the State rate to candles and stoves which may move in the same car to the same point from the same warehouse (R. 119).

It should also be stated that some thirteen per cent of all of the petroleum products coming into the city of Jacksonville are used in that city and somewhere between twenty and thirty per cent of the products coming into Jacksonville are shipped from that city to Southern points in Georgia and Alabama. Of course, these latter shipments properly take the interstate rate. In other words, petroleum products coming into Jacksonville may move in one of three different ways—some of them are used at Jacksonville, some go to southern points in Georgia and Alabama, and the balance to interior points in the State of Florida. There is no separation made in the tanks at Jacksonville between any of the products moving in the various ways mentioned. All of the oil in one tank may be used in Jacksonville, or it may go to inland points in Florida, or it may go to southern points in Georgia or Alabama, depending entirely upon the demands of the Oil Company's business at the time (R. 90).

None of the petroleum products coming into the port at Port Tampa are used at that point. The Oil Company maintains no delivery facilities or wagons

there, but of course some of these products are used in the city of Tampa, the record not disclosing the percentage (R. 90).

It was this slight difference in the Oil Company's method of doing business at Jacksonville and at Port Tampa that led the Circuit Court of Appeals to hold that the traffic from Jacksonville was State traffic and that the traffic from Port Tampa was interstate traffic. If the decision of the Circuit Court of Appeals were allowed to stand, the greatest confusion would result because for all practical purposes the business is handled the same way from both cities and the traffic is either all intrastate or interstate and the same rate should be applied to traffic from both points.

It should also be stated that the Oil Company pays local taxes to the State of Florida upon all of its petroleum products (R. 120).

The above constitutes a statement of the facts in the case. There is no dispute about them and a statement of the facts simply involves a statement of the Oil Company's method of doing business. The Oil Company has used the present method of conducting its business for years and, as already stated, prior to June 15, 1923, the Railroad Company applied the State rate to all of this traffic, but on the date named it made the change. In fact some of the railroads, namely, the Florida East Coast Railway Company, the Southern Railway Company and the Louisville & Nashville Railroad Company, still apply State rates to all of this traffic (R. 114).

Summarized, the Oil Company does in the State of Florida a strictly local business. Its products move into the State in interstate or foreign commerce and thereafter are held by it in storage tanks for indefinite periods of time. It keeps on hand at all times adequate supplies to meet the demands of its Florida customers. It is purely State commerce from the time the petroleum products come to rest in the tanks and the rates to be applied to the transportation necessary to serve that commerce should be the State rates.

ASSIGNMENT OF ERROR.

The Circuit Court of Appeals erred in holding that the traffic in gasoline, refined oil and fuel oil from Port Tampa to interior points in Florida was interstate commerce and governed by interstate rates, and in not holding that the fuel oil movement from Jacksonville was intrastate traffic.

POINTS AND AUTHORITIES.

First: The Oil Company's business in Florida is a local business carried on in intrastate commerce and intrastate rates should be applied to the transportation necessary to serve the business.

Atlantic Coast Line Railroad Co. v. Standard Oil Co. of New Jersey, 12 Fed. (2d Series) 541 (Certiorari denied by this Court);
Standard Oil Co. v. Atlantic Coast Line Railroad Co., 6 Fed. (2d Series) 911;
Seaboard Air Line Railway Co., Petitioner, v.

State of Florida, *ex rel.*, etc., Supreme Court, Docket No. 128; 109 So. 656 (not yet officially reported);

Atlantic Coast Line Railroad Co., Petitioner, v. State of Florida, *ex rel.*, etc., Supreme Court, Docket No. 129; 109 So. 656 (not yet officially reported).

Second: When products are unloaded, stored and mixed with other property in the State, interstate commerce is ended for all purposes.

General Oil Co. v. Crain, 209 U. S. 211;
Texas Co. v. Brown, 258 U. S. 466;
Sonneborn Bros. v. Cureton, 262 U. S. 506.

Third: The business of supplying on demand local consumers is a local business.

Public Utilities Commission v. Landon, 249 U. S. 236;
Missouri v. Kansas Gas Co., 265 U. S. 298;
People's Natural Gas Co. v. Public Service Commission, 270 U. S. 550;
Public Utilities Commission of Rhode Island v. Attleboro Steam & Electric Co., 273 U. S. 83.

Fourth: The Florida ports are in good faith and for business purposes points of distribution for the Oil Company's products. The movement out, therefore, is a separate and distinct distributing movement and not a continuation of the original movement.

Gulf, Colorado & Santa Fe Railway Co. v. Texas, 204 U. S. 403;
Chicago, Milwaukee & St. Paul Railway Co. v. State of Iowa, 233 U. S. 334;
Arkadelphia Co. v. St. Louis Southwestern Railway Co., 249 U. S. 134.

Distinguished:

Texas & New Orleans Railroad Co. v. Sabine Tram Co., 227 U. S. 111;
Baltimore & Ohio Railroad Co. v. Settle, 266 U. S. 166;
Stafford v. Wallace, 258 U. S. 495;
Binderup v. Pathe Exchange, 263 U. S. 291;
Lemke, Attorney General, v. Farmers Grain Co., 258 U. S. 50.

Fifth: The traffic in fuel oil is also intrastate traffic.

Washington Dehydrated Food Co. v. Great Northern Railway Co., 102 I. C. C. 363.

Distinguished:

International Agricultural Corporation v. Director General, as Agent of the Seaboard Air Line, 60 I. C. C. 726;
Alexander Grocery Co. v. Beaumont, Sour Lake & Western Railway Co., 104 I. C. C. 155;
Tampa Fuel Co. v. Atlantic Coast Line, 43 I. C. C. 231.

Sixth: Conclusion.

ARGUMENT.

The Oil Company's storage tanks at Port Tampa, Tampa and Jacksonville, and also its warehouses, are an essential part of its equipment for carrying on its Florida business. They are not simply means of transferring commodities from water to rail transportation. They are, as their names imply, storage tanks and warehouses in truth and in fact, and petroleum products are

stored in them indefinitely, awaiting the call of Florida business. They are in principle exactly like a warehouse or other storage depot of a jobber in any other line of business, such as the hardware business. Products move into them from outside of the State. The products are held there indefinitely and are shipped out only upon demands from local customers.

It is essential in the Oil Company's business for it to have an enormous storage capacity and the reasons for this are two-fold. First, it must be able at all times to satisfy its Florida customers, and, second, the oil market is a fluctuating one and the Oil Company must be in a position to accumulate large reserves of petroleum products when its officers are of the opinion that the oil market is going to advance, and according to the testimony in this case the storage capacity of the Oil Company is used frequently for that purpose.

It appears from the record that during the months of July, August and September of 1925, the price of gasoline was declining. During that period the Oil Company received at Port Tampa and Jacksonville approximately 210,000 barrels of gasoline. In those same three months it shipped out approximately 400,000 barrels, allowing its stocks to drop from 223,000 barrels on June 30, to 42,000 barrels on September 30. In other words, the opinion of the Oil Company's officers was that the stock should be depleted because these officers thought that the market was going lower. It only made small purchases during that period and of course tried to buy the gasoline as close to the bottom of the market as possible (R. 60).

On the other hand, during the months of April, May and June, 1925, the gasoline markets were advancing and the officers of the Oil Company were of the opinion that the markets were going higher. During that period therefore the Oil Company made large purchases and accumulated stocks in its tanks. It put into its tanks at Port Tampa and Jacksonville, 408,600 barrels of gasoline, but its shipments from those two points during that period approximated only 333,000 barrels. In other words, it was accumulating stock and taking advantage of the market conditions by the proper use of its storage facilities (R. 60).

In January, 1925, the Oil Company shipped from Port Tampa 58,406 barrels of gasoline; in December of the same year it shipped 88,862 barrels; in May of 1925, it shipped from Jacksonville, 64,805 barrels; in November of the same year it shipped 102,702 barrels, all of which shows that the movements into and out of these ports are irregular, depending entirely upon the varying conditions of the Oil Company's business in the State of Florida (R. 63, 64, 77 and 78).

It is submitted therefore that it cannot be truthfully said that the storage tanks at the Florida ports are part of the transportation facilities. If that were so, it would not be necessary to have the storage capacity of the tanks very much larger than the size of any one ship serving the traffic. As a matter of fact, however, the tanks are, as already stated, some thirteen or fourteen times as large in capacity as the cargo capacity of any ship serving the trade. The storage tanks, therefore, are much more than transportation facilities.

They are an essential part of the Oil Company's equipment to carry on a strictly local business in the State of Florida.

As this Court has said, the question of what is interstate or intrastate traffic is in the last analysis one of fact. It is having that principle in mind that we have made such a detailed statement of the conduct of the Oil Company's business.

In Southern Pacific Co. v. Arizona, 249 U. S. 472, at page 477, the Court said:

> "* * * Whether a shipment was at a given time in interstate commerce is a question of fact, * * *"

It is necessary to keep that principle in mind in reading the cases discussing this question, because unless it is kept in mind constantly the principles laid down in the various cases are somewhat confusing.

THE TRAFFIC IS STATE TRAFFIC.

The exact question involved in the case at bar was before the Circuit Court of Appeals for the Fourth Circuit in the case of Atlantic Coast Line Railroad Co. v. Standard Oil Co. of New Jersey, 12 Fed. (2d Series) 541, in which case this Court denied a petition for writ of certiorari. There the Standard Oil Company of New Jersey filed two suits, one against the Atlantic Coast Line Railroad Company and one against the Seaboard Air Line Railway Company, asking for an injunction enjoining those Companies from charging anything other than the State rates. The case pre-

sented exactly the same question as is involved in the case at bar. The traffic in that case moved from Wilmington, North Carolina, a port point, to interior points in the State of North Carolina. Of course the products came into the port at Wilmington in tank steamers exactly as in the case at bar, the only difference being that in that case the oil company brought petroleum products into Wilmington in its own tank steamers, directed that movement, and of course owned the petroleum products during the entire boat movement. In the case at bar the Oil Company has nothing to do with the boat movement and does not acquire title to or possession of the petroleum products until they are delivered to it in its storage tanks at the Florida ports. Of course the entire opinion in the North Carolina case is pertinent to the discussion of the case at bar and we do not undertake to quote from the opinion. It is sufficient to say that the opinion of the Circuit Court in the North Carolina case went fully into all of the authorities and held that the traffic involved was State traffic and should carry the State rates.

The Circuit Court of Appeals in the North Carolina case affirmed the District Court of North Carolina, which Court had theretofore considered the case and delivered a written opinion which is reported under the style of Standard Oil Co. v. Atlantic Coast Line Railroad Co., 6 Fed. (2d S.) 911.

The Supreme Court of Florida has also recently decided a case that involved the traffic under consideration in the case at bar and that case is now before this Court on certiorari under the style of Seaboard Air

Line Railway Co., Petitioner, v. State of Florida, *ex rel.,* etc., and Atlantic Coast Line Railroad Co., Petitioner, v. State of Florida, *ex rel.,* etc., No. 128 and 129. In that case the Supreme Court of Florida, speaking of the very traffic involved in the case at bar concluded its opinion with the following language:

> "In this view of the facts we are of the opinion that the petroleum and petroleum products stored in storage tanks and warehouses at Jacksonville and Tampa come to rest there; that the interstate movement ceases and that subsequent shipments of it to points within the state are intrastate movements and subject to the rates prescribed by the relators."

We have mentioned the North Carolina case and the Florida case first in our brief for the reason that both of these cases deal with the oil business and with the exact question presented in the case at bar. There are other cases, however, from this Court which lay down principles which, we submit, control the decision of the case at bar, that where petroleum products come to a state of rest in storage tanks the interstate journey is over.

WHEN PRODUCTS ARE UNLOADED, STORED AND MIXED WITH OTHER PROPERTY IN THE STATE, INTERSTATE COMMERCE IS ENDED.

The case of General Oil Co. v. Crain, 209 U. S. 211, has long been a leading case. That is the case in which the oil company sought to escape taxation upon the ground that its products were moving in interstate commerce. The oil company brought a suit to enjoin

the State officers of Tennessee from enforcing an inspection tax on oil and gasoline. The Company maintained a large place of business at Memphis, consisting of storage tanks and other equipment. Its wells, refining and manufacturing plants were located in Pennsylvania and Ohio. It transported its products by rail from those States to Memphis. The Company had separate tanks in Memphis labeled as follows: "Oil already sold in Arkansas, Louisiana and Mississippi" and others labeled "Oil to be sold in Arkansas, Louisiana and Mississippi." The Company took the position that the oil in tanks so labeled was not subject to local laws, upon the ground that it was moving in interstate commerce, that the delay in Memphis was merely for the purpose of separation, distribution and reshipment, and was no longer than was required by the nature of the business and the exigencies of the business, that the interstate transit of the oil was not finally ended at Memphis but was only temporarily interrupted there.

The Court, however, said on page 230 of its opinion, that the property was receiving the protection of the State, that it had reached the destination of its first shipment, and was held there, not in necessary delay or accommodation to the means of transportation, but for the business purposes and profit of the Company. The Court, accordingly held that the interstate commerce had ended and that the property was subject to the State Tax Laws of Tennessee.

One of the points made in the Crain case was that that part of the oil being held there to fill orders al-

ready received, just as fuel oil is held in the case at bar, was still moving in interstate commerce, but the Court dismissed this contention of the oil company by stating that in order to fill those orders it was necessary that the property be given a locality in the State of Tennessee beyond a mere halting in its transportation. In other words, it required storage there, maintenance of the means of storage, putting it in and taking it from storage, and that that in reality was a necessary branch of the oil business.

The only way that the Crain case can be distinguished from the case at bar is to say that the Crain case involved a question of taxation, while the case at bar involves a question of transportation, but we believe that this is a distinction without a difference. The question to be decided in both cases was whether the petroleum products come to such a state of rest that the interstate journey is ended and the Court in the Crain case answered the question affirmatively. Indeed, if the Court had not answered the question in that way, then practically all oil business would be an interstate business in States where no oil is produced, because in every such case the petroleum products would have to come into the State from outside, and if the movement from outside should so color subsequent movements within the boundaries of a particular State, then practically all the oil business in States where there is no production has to be carried on in interstate commerce. We submit that such a principle applied to the oil business would not be sound.

This Court has also recognized the principle in the case of Texas Co. v. Brown, 258 U. S. 466. That was a suit for an injunction to restrain the officials of the State of Georgia from enforcing an inspection law of that State. The conditions under which the Texas Company did business in Georgia are stated on page 472 of the Court's opinion and the conditions there stated are similar to the case at bar, except that the oil came into Georgia by tank car instead of by tank steamer. Indeed the oil business all over the country is conducted in more or less the same way. One of the important points made in the case was that the Inspection Law was an interference with interstate commerce in that it inspected products brought in from other States. It was necessary for the Court to decide when the interstate commerce ended in the oil business, and the Court said on page 473:

> "* * * that so far as plaintiff's products were indefinitely stored within the State, or sold there after breaking bulk or original packages, they were subject not only to inspection but to the tax imposed, as soon as the interstate transportation was ended; and that the State should be permitted to enforce the inspection fees so soon as the products passed out of interstate commerce, although restrained with respect to products while in such commerce; citing *Ratterman* v. *Western Union Telegraph Co.*, 127 U. S. 411."

Here is a plain statement that, when the oil or gasoline is indefinitely stored within the State, interstate commerce has ceased.

Again, the Court said, on page 477:

> "Ordinarily, unless a loaded car be used for indefinite storage, or as a distributing tank for local sales (nothing of either kind appears in the case), *it remains in interstate commerce until unloaded,* and the agents of the State may not lawfully subject its contents to the inspection charges *until transferred to the storage tank,* unless with plaintiff's consent * * *" (Italics ours).

Here the Court plainly states that, after the products are pumped into storage tanks, interstate commerce is over.

The case of Sonneborn Bros. v. Cureton, 262 U. S. 506, laid down the same principle. That was a case involving a tax upon receipts for the sale of oil shipped into the State of Texas from outside of the State and afterwards sold from the storerooms in unbroken packages. The Court held that the traffic was intrastate traffic and the receipts subject to the tax.

The three cases just cited involved the oil industry and we submit that the Court has laid down principles decisive of the case at bar holding that the interstate traffic in the petroleum industry ends when the petroleum products are brought to a state of rest in large storage tanks thereafter to be distributed in local commerce.

THE BUSINESS OF SUPPLYING ON DEMAND LOCAL CONSUMERS IS A LOCAL BUSINESS.

As has already been stated, the Oil Company's business in Florida is a local business. In addition to the large storage tanks at the ports, the Oil Company has 123 bulk marketing stations at inland points, 165 drive-

in service stations, approximately 410 delivery vehicles, approximately 5,000 dealer customers and several hundred thousand retail customers (R 61).

It sells its products in the usual way. No contract is made in advance of the arrival of the product at the port except in the case of fuel oil. All of the other products come into the port and await the orders and pleasure of the Oil Company's customers. In such a case, even though the petroleum products have come into the State of Florida in interstate or foreign commerce, the subsequent commerce is state commerce.

This rule was laid down in the case of Public Utilities Commission v. Landon, 249 U. S. 236. The important facts in that case were that the Receivers of the Kansas Natural Gas Company sued to prevent the various defendants, including the State Utilities Commissions of Kansas and Missouri from interfering with the establishment and maintenance of rates for gas consumers sufficiently high to compensate the Receivers. The Gas Company owned a system of pipe lines extending from Oklahoma and Kansas points to certain towns and cities in Kansas and Missouri. The Gas Company produced, purchased, transported and distributed gas under agreements to local companies. The local companies in turn sold the gas to their customers. The Missouri Public Service Commission suspended the proposed advance in rates to consumers and the Receivers began a proceeding against the Missouri Commission and others for an injunction restraining the Commissions and others from interfering with the establishment of reasonable compensatory rates. The

Court below held that the commerce was interstate commerce of a national character and that the action of the Public Service Commissions interfered with and burdened interstate commerce. This Court in considering the case said:

> "But we cannot agree with its conclusions that local companies in distributing and selling gas to their customers acted as mere agents, immediate representatives or instrumentalities of the receivers and as such carried on without interruption interstate commerce set in motion by them.
>
> "That the transportation of gas through pipe lines from one State to another is interstate commerce may not be doubted. Also, it is clear that as part of such commerce the receivers might sell and deliver gas so transported to local distributing companies free from unreasonable interference by the State. American Express Co. v. Iowa, 196 U. S. 133, 143; Oklahoma v. Kansas Natural Gas Co., 221 U. S. 229; Haskell v. Kansas Natural Gas Co., 224 U. S. 217.
>
> "But in no proper sense can it be said, under the facts here disclosed, that sale and delivery of gas to their customers at burner-tips by the local companies operating under special franchises constituted any part of interstate commerce. *The companies received supplies which had moved in such commerce and then disposed thereof at retail in due course of their own local business.* Payment to the receivers of sums amounting to two-thirds of the product of these sales did not make them integral parts of their interstate business. In fact, they lacked authority to engage by agent or otherwise in the retail transactions carried on by the local companies. Interstate commerce is a practical conception and what falls within it must be determined upon consideration of established facts and known commercial methods.

> Rearick v. Pennsylvania, 203 U. S. 507, 512; The Pipe Line Cases, 234 U. S. 548, 560. The thing which the receivers actually did was to deliver supplies to local companies. Exercising franchise rights, the latter distributed and sold the commodity so obtained upon their own account and paid the receivers what amounted to two-thirds of their receipts from customers. Interstate movement ended when the gas passed into local mains. The Court below erroneously adopted the contrary view and upon it rested the conclusion that the Public Commissions were interfering with establishment of compensatory rates by the receivers in violation of their rights under the Fourteenth Amendment." (Italics ours.)

Accordingly the case was reversed. The language of the Court is pertinent to the case at bar. The Oil Company receives supplies which have moved in interstate or foreign commerce, but it receives those supplies, stores them and then disposes of them in a purely local business, and the transportation movement necessary to the local distribution of its supplies is an intrastate movement. In its essential facts the Landon case is almost identical with the case at bar and this Court took the broad view in the Landon case that the interstate commerce movement ended when the gas was delivered to the distributing companies and that thereafter intrastate commerce began. In other words, we submit that it looked at the situation as it is and treated local commerce as local commerce.

The Landon case answers two arguments that have been used by the Railroad in the case at bar. The Railroad Company draws a picture of the great flow of oil from Baton Rouge and Tampico, through

the tank steamers, into the large storage tanks, then into tank cars, then into the smaller storage tanks, and then into the gasoline tanks of the automobiles. The picture is one of a continuous flow of oil from Tampico and Baton Rouge to the gasoline tanks in the automobiles in the State of Florida. The same picture could have been drawn in the Landon case, gas flowing from the wells, through the pipe lines in Kansas and Oklahoma, through the tanks of distributing companies in Missouri, to the gas burner tips of the consumers, but the fact is commerce in any article which is imported into the various states can be pictured in exactly the same way and if this argument establishes that all such business is interstate commerce, then practically all of the business of the country is interstate commerce and there could be very little local business. Of course, in the case at bar the stop at the ports is much more pronounced than appears in the Landon case.

The second argument referred to is that made by the Railroad Company that the Oil Company knows that its petroleum products are not going to stop at the ports, but are going to interior points and that this makes the movement continuous, but the same argument could have been advanced in the Landon case about the gas. But evidently the Court did not consider it of importance.

The fact remains that in the case at bar the business is essentially local just as much so as the hardware business or any other business in which large storage facilities are required to gather goods and products

from other states and hold them in the one state subject to local demands.

Another gas case was that of Missouri v. Kansas Gas Co., 265 U. S. 298. In that case the question was directly presented as to the character of the commerce carried on between the Gas Company and distributing companies in Missouri and Kansas, and the Court held that the sale from the Gas Company to the distributing companies was interstate business and not subject to state regulations. The Court, however made it perfectly plain that under the Landon case this rule would not apply in the sale of gas by the distributing companies to the consumers. The Court said, on page 308:

> "* * * *With the delivery of the gas to the distributing companies, however, the interstate movement ends. Its subsequent sale and delivery by these companies to their customers at retail is intrastate business and subject to State regulation.* Public Utilities Comm. v. Landon, *supra,* p. 245. In such case the effect on interstate commerce, if there be any, is indirect and incidental. But the sale and delivery here is an inseparable part of a transaction in interstate commerce—not local, but essentially national in character—and enforcement of a selling price in such a transaction places a direct burden upon such commerce inconsistent with that freedom of interstate trade which it was the purpose of the commerce clause to secure and preserve. * * *" (Italics ours.)

And again, on page 309:

> "In both cases the things done were local and were after the business in its essentially national aspect had come to an end. The distinction which constitutes the basis of the present decision is

clearly recognized in the Landon case. *The business of supplying, on demand, local consumers is a local business, even though the gas be brought from another State* and drawn for distribution directly from interstate mains; and this is so whether the local distribution be made by the transporting company or by independent distributing companies. In such case the local interest is paramount, and the interference with interstate commerce, if any, indirect and of minor importance. But here the sale of gas is in wholesale quantities, not to consumers, but to distributing companies for resale to consumers in numerous cities and communities in different States. The transportation, sale and delivery constitute an unbroken chain, fundamentally interstate from beginning to end, and of such continuity as to amount to an established course of business. The paramount interest is not local but national, admitting of and requiring uniformity of regulation. * * *" (Italics ours.)

Here it seems to us that the Court has stated the rule very clearly that the business of supplying on demand local consumers is a local business and the fact that the Oil Company's products come into the State of Florida in interstate commerce should not be allowed to color the entire transaction and make interstate business out of what is a purely local affair.

Another gas case was that of People's Natural Gas Co. v. Public Service Commission, 270 U. S. 550. In that case the validity of an order of the Public Service Commission of Pennsylvania requiring the People's Gas Company to continue its prior practice of supplying natural gas to another company at Johnstown for sale to consumers in that city was involved. It appears

that the People's Company purchases two-thirds of its gas from a producing company in West Virginia, having pipe lines leading from wells in that state to the boundary between West Virginia and Pennsylvania, and that the People's Gas Company produced the other one-third from its own wells in the Southwestern counties of Pennsylvania. What this Court held was that as there was enough Pennsylvania gas flowing into the mixture to meet the requirements of the Public Service Commission, interstate commerce was not involved and the order was upheld. This Court said in concluding its opinion as to whether the order, if it did apply to interstate commerce, could have been sustained became immaterial in view of the conclusion the Court had reached. There is some language in the opinion, however, which seems to indicate that the Court considered the gas from West Virginia passing through the pipe lines without a stoppage of any kind at the state boundary and a prompt delivery to purchasers, as a movement in interstate commerce. But the Court at two points in its opinion indicated that the reason for this expression of opinion was that the transportation was not interrupted at the state border line and that the gas passed over the boundary without its movement being arrested.

Of course in the case at bar the transportation is interrupted for a varying length of time at the Florida ports and this fact we submit distinguishes the case at bar from the People's Gas case.

The most recent case we have found is that of Public Utilities Commission of Rhode Island v. Attleboro

Steam & Electric Co., 273 U. S. 83. The subject of commerce dealt with was electric current and the Court held that under the facts of the case the commerce was interstate commerce. The Court, however, recognized the principles for which we contend in the language that it used in its opinion. It said, on pages 88 and 89:

> "* * * that in the *Pennsylvania Gas Co.* case, the decision rested on the ground that the service to the consumers for which the regulated charge was made, was 'essentially local,' and the things done were after the business in its essentially national aspect had come to an end—the supplying of local consumers being 'a local business,' even though the gas be brought from another State, in which the local interest is paramount and the interference with interstate commerce, if any, indirect and of minor importance; * * *"

So in the case at bar. The national aspect of the Oil Company's business has come to an end when it purchases its supplies from the selling companies and the selling companies deliver these supplies into the Oil Company's tanks in the Florida ports. Thereafter the dealings in these supplies are of concern only to itself and its customers in Florida.

THE FLORIDA PORTS ARE IN GOOD FAITH AND FOR BUSINESS PURPOSES POINTS OF DISTRIBUTION FOR THE OIL COMPANY'S PRODUCTS.

The Florida ports are nothing more nor less than points of distribution. There the products come to an indefinite state of rest and bulk is broken. The movement out therefore is a separate and distinct distributing movement and not a continuation of the original

movement. This rule is laid down in all of the cases involving transportation questions.

Gulf, Colorado & Santa Fe Railway Co. v. Texas, 204 U. S. 403. In that case there was involved the question of a penalty which was to be imposed upon the Railway Company for exacting an interstate instead of an intrastate charge on grain shipped from Texarkana, Texas, to Goldthwaite, Texas, upon a bill of lading which showed upon its face only a local transportation. The Railway Company took the position, however, that the local transportation was a continuation of the shipment from outside of the State, that the corn started from Hudson, South Dakota, and that its destination was Goldthwaite, Texas. The Court said, however, on page 409:

> "When the commodity transported has reached the termination of its journey and has been delivered to the consignee, it ceases to be a subject of interstate commerce, and the subsequent shipment from the point at which it has been delivered to another point in the State, is an intrastate shipment."

We take it that what the Court meant in the Texarkana case was that in the absence of bad faith on the part of the shipper in an effort to take advantage of the rate, the actual facts in regard to the movement control. If the corn were stopped in good faith at one point in the state and then in good faith shipped to another point, the latter movement is local.

This seems to us to be the difference between the Texarkana case and the case of Baltimore & Ohio Rail-

road Co. v. Settle, 266 U. S. 166. That case was a transportation case but it involved the question of good faith on the part of the shipper, it appearing that the stoppage was not for the business purposes of the shipper but that the sole and only purpose was to obtain a cheaper rate. We quote from page 167 of the Court's opinion:

> "The Baltimore & Ohio Southwestern Railroad has freight stations at Oakley and at Madisonville, both within the city limits of Cincinnati. It duly published, in connection with other carriers, interstate carload rates on lumber from southern points to Oakley and to Madisonville. It also duly published intrastate carload rates from Oakley to Madisonville. The interstate rates to Madisonville were higher than the interstate rates to Oakley plus the local rate from Oakley to Madisonville. W. H. Settle & Co., who are lumber dealers, with a place of business at Madisonville, had lumber shipped from the South to Oakley; paid the freight to that point; received at that station delivery of the loaded cars on the team tracks or in the bulk yard; and, without unloading any of the cars, reshipped them within a few days to Madisonville on local bills of lading, paying the local freight rate. *Thus, the shippers secured transportation of the lumber to Madisonville by paying less in freight charges than would have been payable according to the interstate tariff, if the cars had been billed through to Madisonville.* At the time these cars were shipped from points of origin, and continuously thereafter, it had been the intention of the shippers that the cars should go to Madisonville. They were billed to Oakley and physical possession was taken by the shipper there, in order to get the benefit of the lower freight charges resulting from the combination of rates." (Italics ours.)

There was a deliberate attempt on the part of a shipper to take advantage of an anomalous situation and secure a lower freight rate than that provided for in the tariff, but the Supreme Court refused to permit it. But we submit that that case does not lay down any principle contrary to the principle for which the Oil Company contends in the case at bar. There is no question of the Oil Company arranging its business or shipments so as to take advantage of the lower rates. The Oil Company's business is conducted now as it has been conducted for years past and there is no intimation of bad faith in the case at bar, such as was directly involved in the Settle case.

The Davenport case is also an important case. It is reported as Chicago, Milwaukee & St. Paul Railway Co. v. State of Iowa, 233 U. S. 334. There the Railroad Commission had ordered the Railroad Company to accept shipments of coal in foreign cars at Davenport, Iowa, and move them to other points in Iowa. The Railroad Company claimed that the Commission had no authority to make such an order, because the movement was a movement from outside the State and constituted interstate commerce. The Railroad Commission found that the city of Davenport, under the facts in the case, had become a distributing point for coal shipped from outside the State, and that the movements from Davenport to other points in Iowa were intrastate. This Court adopted the same view and stated, on page 343:

"The record discloses no ground for assailing this finding. It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character of the commerce and not by mere billing or forms of contract. (Citing cases.) But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received, to other points of destination, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same State from having an independent and intrastate character. * * *"

Of course the facts in the case at bar are much stronger in supporting the view of intrastate commerce than they were in the Davenport case. The state of rest to which the coal came in the Davenport case is not comparable to the state of rest to which the petroleum products come in the case at bar. The division line between the inbound movement and the outbound movement is much more distinct in the case at bar. The fact is that in the case at bar the movement outward bound from the tanks has nothing to do with the inbound movements from the steamers and oftentimes they are as far as three months.

The case of Arkadelphia Co. v. St. Louis Southwestern Railway Co., 249 U. S. 134, is also a transportation case, which we submit sustains the Oil Company's contention in the case at bar. In that case the business involved is the lumber business. It appeared that the lumber left the woods and the bill of lading was issued from the woods to the mill. When the lumber reached the mill it was finished into barrel staves,

or headings, or hoops, stacked in the yard to dry, and stayed there over a course of several months. All of these things took place in the State of Arkansas. The Court then goes on to say, on page 150:

> "* * * The markets for the manufactured articles were almost altogether in other states than Arkansas, or in foreign countries, and about ninety-five per cent. of the sale of finished articles, that is, of the total outbound shipments, were made for delivery at points outside the State of Arkansas, the remaining five per cent. being sold and delivered, or shipped to points within the State of Arkansas. At the time the rough material was shipped to the mills, the mills did not know to whom they would sell the finished product, or to what points it would be shipped, but did know that there was little market for the finished articles in the State of Arkansas, and expected that they would sell ninety-five per cent. of said finished articles and ship them to points outside the State of Arkansas.
>
> "It was the intention of all the claimants herein, at the time they shipped the rough material into the milling points, to mill said rough material with the object of selling the said finished product and shipping it out as soon as practicable, and all of them knew and intended at the time they brought the rough material into the mill, on account of previous course of dealings in the business, that ninety-five per cent. of the finished product would be by them shipped to points outside the State of Arkansas.
>
> "The claimants paid the usual property tax to the State of Arkansas on their stock of materials on hand at the milling point, whether said stock was in the rough or finished, the amount of the tax being arrived at according to the methods in use in the State of Arkansas by the use of an average basis."

It is submitted that the facts stated bring the Arkadelphia case extremely close to the case at bar and the Court held of course in the Arkadelphia case that the movement from the forest to the mill was not an interstate movement but was separate and apart from the outward bound movement.

So in the case at bar. While the Oil Company knows that a large percentage of the petroleum products will move eventually from Port Tampa and Jacksonville to interior points in Florida, this knowledge does not alter the character of the movements from the ports, which are in their essential characteristics local movements. Of course attention has already been called to the fact that in Jacksonville thirteen per cent. of all products are used there and that some fifteen to twenty per cent. are shipped from Jacksonville to points in Georgia, so that the movement after the products reach Jacksonville is uncertain in the last degree. At Port Tampa there is no market for petroleum products and none are used there. At Tampa, however, which is nine miles from Port Tampa, a certain percentage of the products are used, but the record does not disclose what percentage.

The Railroad Company in the case at bar relies largely on the case of Texas & New Orleans Railroad Co. v. Sabine Tram Co., 227 U. S. 111. In that case it appeared that an export firm by the name of W. A. Powell Company bought for export from Sabine Tram Company 500,000 feet of heavy pine lumber to be delivered at Sabine, Texas. From this point we state the

case in the language of the Court. The Court said at page 114:

> "At the date of the transactions in question the Sabine Tram Company was engaged in the manufacture of lumber at its mill at Ruliff, a station in Texas on the line of the Texarkana & Fort Smith Railway Company. W. A. Powell Company, Limited, was engaged in buying lumber for export to different points in Europe, through the ports of Sabine and Port Arthur, both in the State of Texas. On August 28, 1906, having made sales to customers for future delivery in Europe of large amounts of heavy pine lumber, for the carriage of which steamships had in part already been chartered, to fill such contracts, W. A. Powell Co. bought of the Sabine Tram Company 500,000 feet of heavy pine lumber of certain dimensions, to be delivered during the months of September and October. The contract provided for delivery either in the water at Orange, Texas, or f. o. b. cars at Sabine, Texas, at the option of the seller. The seller exercised the option to deliver at Sabine, a station on the line of the Texas & New Orleans Railway. * * *"

Again, the Court said, on page 115:

> "* * * Upon arrival at the station of Sabine it was, by direction of the agent of Powell Company carried without delay about a quarter of a mile beyond the station to the dock, where the lumber was to be unloaded. The lumber was unloaded from the cars into water of the slip in reach of ship's tackle, ready for loading onto ships. The Sabine Tram Company had no connection with this further carriage or switching of the lumber to the docks after its arrival at the station of Sabine, but this was done solely at the instance and under the direction of the agent of Powell

Company. The transportation from Ruliff to Sabine was entirely within the State of Texas."

The Court said again, on page 116:

"W. A. Powell Company, Limited, regarded the shipments in controversy as export shipments, and demanded, expected, and received, the use of terminal facilities, additional free time and other privileges accorded to shippers of export freight under export tariffs."

The Court said again, on page 117:

"All the lumber in question was in fact unloaded from the cars by W. A. Powell Company, Limited, into the Texas & New Orleans Railroad Company's slips, or upon its docks, in reach of ships' tackle and loaded into the ships previously chartered for the purpose by W. A. Powell Company, Limited, which steamships carried same thence direct to Europe, where this lumber was applied upon contracts for sale in Europe made before the lumber began to leave Ruliff, and made in fact before the lumber was purchased from the Sabine Tram Company, and before it was sawed, and before the logs from which it was sawed left the State of Louisiana for the Sabine Tram Company's mill at Ruliff, in the State of Texas. One of the ships actually waited at the docks at Sabine for the arrival of part of this lumber which constituted a portion of its cargo.

"The ship which carried the last of this lumber from Sabine to Europe was chartered by W. A. Powell Company, Limited, for this purpose after these lumber shipments began to arrive at Sabine, but before all of the shipments had left Ruliff."

It is apparent from reading the above and other quotations which we might make from the statement of facts by the Court that the Sabine Tram Company

was not engaged in any local business in Sabine, had no facilities for a local business, and never intended to nor actually did any business of that character. The business was essentially a foreign one and was impressed with a foreign character from its inception.

In the case at bar, however, the ultimate commerce to be served is the local commerce, and as the Court said in the case of Public Utilities Commission v. Attleboro Co., *supra,* the business is "essentially local" and the things done were after the business in its essentially national aspect had come to an end—the supplying of local consumers being "a local business."

The Sabine Tram case was a case in which the business transacted was essentially foreign and all of the things done in regard to it were essentially foreign.

The Railroad Company also relies on a line of cases involving the prosecutions under the various Anti-Trust Acts, but it is submitted that in such class of cases the Court will frequently extend its rule further towards interstate commerce than it will in an ordinary transportation or taxation case.

We believe the language of the opinion in the case of Pennsylvania Railroad Co. v. Knight, 192 U. S. 21, justifies such a statement. In that case the Court held that the Pennsylvania Company's cab system operated from its station in New York was not such a component part of its system as to constitute the traffic in its cabs interstate commerce, yet the Court said if the Pennsylvania Railroad Company should have used the agency of its cab system as a part of a conspiracy to

unduly and constantly monopolize interstate passenger traffic, it could and would have been brought within federal restraint.

The Circuit Court of Appeals for the Fourth Circuit in the case of Atlantic Coast Line Railroad Co. v. Standard Oil Co. of New Jersey, *supra,* took the same view of the cases involving the Anti-Trust Acts.

We submit therefore that the cases of Stafford v. Wallace, 258 U. S. 495; Binderup v. Pathe Exchange, 263 U. S. 291, and Lemke, Attorney General, v. Farmers Grain Co., 258 U. S. 50, are not important in the discussion of the question involved in the case at bar. The Binderup case was a conspiracy case and in order to break up the combination the Supreme Court held that the facts presented constituted interstate commerce. In the Stafford case the facts involved a conspiracy by the Meat Trust. The Court held that the facts constituted interstate commerce. Also the Lemke case, involving the Grain Futures Act, was disposed of in the same way.

Under authority of the transportation cases which we have cited under this heading, we submit that the storage tanks and warehouses at the Florida ports are essential equipment for the carrying on of the Oil Company's business in Florida. The initial movement ends when the products reach these tanks and warehouses. Thereafter the movement is a distributing movement, separate and distinct from the original movement.

We believe that an illustration taken from another business would be helpful. We have in Louisville a

large hardware company known as the Belknap Hardware & Manufacturing Company. This company maintains a number of very large warehouses in the city of Louisville. It purchases large quantities of hardware from Pittsburg and other eastern cities. A large proportion of these products come down the Ohio River to Louisville on barges. The products are then unloaded and placed in the hardware company's warehouses. The hardware company holds these products then subject to the demands of its local business in Kentucky and in the other southern States. Of course the hardware company realizes fully that the hardware will not stop permanently in the warehouses in Louisville. It realizes that part of its hardware will move to other and smaller cities in the State of Kentucky. We do not believe, however, that this intention or this knowledge on the part of the Belknap Company would characterize the movement out of its warehouses to the smaller cities in Kentucky as part of the original movement into the warehouse and make of it an interstate movement. The movement from the warehouse in Louisville to the small town in Kentucky is a separate and distinct movement from the inbound movement and is a State movement.

Furthermore, the fact that a steady and constant stream of hardware is constantly coming down the Ohio River by barge and passing through the warehouses of the Belknap Company at Louisville to the smaller towns in Kentucky does not impress the movement from Louisville to the smaller towns as a continuation of the

original movement into the warehouse. Louisville is a distributing point for the hardware. The Florida ports are distributing points for the Oil Company's petroleum products. The movement in to the distributing points is one movement; the stay there is indefinite, and the movement out is another and separate movement.

It is submitted that the case at bar cannot be distinguished from the illustration which we have drawn. It is further submitted that the movement of the hardware from the warehouse in Louisville to the smaller towns in Kentucky and the movement from the Florida ports of the petroleum products to interior points in Florida are both State movements.

The illustration does not apply exactly to the Oil Company's method of conducting its fuel oil business because fuel oil moves into Florida on contracts of sale previously made and it has always been conceded by the Oil Company that its case with respect to fuel oil is not as strong as the other branches of its case.

THE TRAFFIC IN FUEL OIL IS ALSO STATE TRAFFIC.

As has already been stated several times, the fuel oil business is handled somewhat differently from the other products. Ninety-five per cent of the fuel oil comes into the State of Florida on contracts previously made for its sale. A sample copy of these contracts was put into the record (R. 121), and showed that the purchaser contracted for 50,000 barrels of fuel oil, deliverable over a year's time, at the rate of about 4,000 bar-

rels per month. The testimony in regard to these contracts was that the customers were not held to regular deliveries, but that the contracts as performed were in reality requirement contracts. As long as the customer acted in good faith he was allowed to take more or less than the amount stated in the contract, that the deliveries were not made in regular quantities but were irregular and dependent upon the business of the customer (R. 123). Furthermore it appears that a small proportion (approximately five per cent) of the fuel oil is held subject to current demands and that there is no separation between the two classes of fuel oil. It all comes in on the same steamer, goes into the same tank and comes out of the same tank. When a cargo is received no one can tell where it is going or when it is going (R. 123). While the Oil Company admits that its case in regard to fuel oil is different and somewhat weaker than the situation in regard to its other products, yet it is submitted that the fuel oil also moves in intrastate commerce in the State of Florida after it is delivered in the storage tanks. No one can tell when fuel oil is pumped into the tanks how long it will stay there, or where it will go, or to what customer, or in what quantity, and the movement out of the port by rail is separate and distinct from the movement into the port by boat. The Oil Company's case with regard to fuel oil is weaker only because ninety-five per cent of the fuel oil is sold before it comes to rest in the tanks and is not held subject to calls of local business as the other products are.

The Interstate Commerce Commission had before it a case with regard to fuel oil which we submit is practically the same as the case at bar, and it decided that the movement from the ports to interior points in the State was a state movement. Washington Dehydrated Food Co. v. Great Northern Railway Co., 102 I. C. C. 363. There the Food Company had two places of business in the State of Washington. It made a complaint to the Interstate Commerce Commission about rates from a port point in the State of Washington to interior points in the same State. The Commission refused to take jurisdiction, however, upon the ground that the movements were intrastate movements. It appeared that the oil was shipped without any previous rail haul from California ports to Richmond Beach in tank steamers owned and operated by the Oil Company exclusively for the transportation of its own commodities. No tariffs were filed by the Oil Company for such service and the tank steamers did not operate on any regular schedule. When the vessel arrived at Richmond Beach the oil was discharged through the pipe line into the storage tanks and thereafter rail transportation took place from Richmond Beach to interior points. The traffic involved is exactly like the traffic in the case at bar and, as already stated, the Interstate Commerce Commission took the view that the movement from the port to interior points was intrastate commerce.

The Railroad Company relies upon two other cases decided by the Interstate Commerce Commission. One

of them was International Agricultural Corporation v. Director General, as Agent of the Seaboard Air Line, 60 I. C. C. 726, which was a case dealing with fuel oil, but in that case the question of jurisdiction was not raised, the jurisdictional question being conceded by all parties to the proceeding.

The second case relied upon by the Railroad Company was that of Alexander Grocery Co. v. Beaumont, Sour Lake & Western Railway Co., 104 I. C. C. 155. That case involved the coffee business. There is not a full statement in the opinion of how the coffee business is conducted, but the Commission simply concludes that the temporary storage of coffee at the ports did not divest the traffic in that commodity of its foreign character or deprive the Commission of its jurisdiction.

The Railroad Company also refers to the case of Tampa Fuel Co. v. Atlantic Coast Line, 43 I. C. C. 231, but it is submitted that that case is an excellent example of a through movement. The complainant in that case was a coal dealer in Baltimore and sold coal to the phosphate rock producers in the Bone Valley District of Florida. It had no place of business in Florida and so far as the record shows did no local business. The coal shipments originated at Baltimore and other North Atlantic ports and moved in ocean vessels directly to Port Tampa. Before the arrival of the vessel the Atlantic Coast Line's agents were notified of the expected arrival and what part of the cargo was to go to Tampa and what portion to the Bone Valley District. The coal was unloaded directly onto the cars

from the boats without any stoppage of the movement, and went on to its ultimate destination. The Atlantic Coast Line agent did the unloading from the vessel to the railroad cars and billed the coal either to Tampa or Bone Valley, according to instructions given by the shipper before the vessel ever reached Port Tampa. The Commission held that the movement out by rail was simply a continuation of the boat movement. A definite arrangement for a continuous movement was made in advance and there was no actual or constructive stoppage of the traffic at the port. In fact the whole arrangement was designed to avoid unnecessary stoppage. Under those circumstances there is no doubt that the movement from Port Tampa to the Bone Valley District was part of a definite through movement from Baltimore to the Bone Valley District, and the Commission so held.

One of the Railroad Company's witnesses testified that frequently oil was coming out of the tanks at the same time it was being pumped into them by the ship (R. 128). Upon cross-examination, however, it developed that in some months the Oil Company has only two steamers coming in and in some months four and occasionally as many as five in one month, that some of the steamers take one day to unload and others possibly two days (R. 129, 130). In a month therefore in which the Oil Company only received two steamers and it so happened that these steamers only took a day each to unload, there would only be two days on which steamers were being unloaded at the same time tank

cars were being filled, assuming that tank cars were filled every day. We do not believe this point is important. We only mention it because some point is made of it in the Railroad Company's brief. The important fact is that the storage tanks are of far greater capacity than any steamer serving the trade and that large reserve supplies of petroleum products are stored in the tanks for indefinite periods of time.

CONCLUSION.

The Oil Company submits the following summarization of its case:

FIRST: The Oil Company does a strictly local business in Florida. It must have products and facilities to serve that business. Its products are petroleum products, none of which are produced in Florida. Its facilities are storage tanks and warehouses at the ports, and bulk stations, drive-in service stations, tank wagons and trucks at the interior points.

SECOND: The petroleum products are purchased from companies outside of the state—the fuel oil from Tampico, Mexico, and the other products from Baton Rouge, Louisiana. They move into the Florida ports in tank steamers, private carriers, under the direction and control of the selling companies. The Oil Company itself has nothing to do with this movement.

THIRD: After the vessels are docked in the Florida ports the products are pumped into the Oil Company's storage tanks. There the title passes and the Oil Company takes possession. Up to this point the

products have never been in the hands of a carrier and the Railroad Company has had nothing to do with the products or the movement.

FOURTH: Bulk is broken and the products then remain in the tanks for varying and indefinite lengths of time. They become mixed with the general mass of Florida property and are subjected to state taxation there. The stay in the tanks varies from a short time to a long time, depending upon the Oil Company's local business in Florida. Thereafter, it may be within one week or it may be within three months, the contract of carriage is made with the Railroad Company. Then for the first time does the Railroad Company appear in the transaction. It hauls all the products from *Port Tampa* to interior points in Florida. It hauls twenty or thirty per cent. of the products, excluding fuel oil from *Jacksonville* to points in Southern Georgia and Alabama on an interstate rate. It hauls approximately sixty-two per cent. to interior points in Florida to serve the local business, and the balance, approximately thirteen per cent., is consumed in Jacksonville.

FIFTH: No separation as between the products moving in the various ways is made in the tanks. At the time the products come into the tanks no one knows in how many shipments they will leave, or to what points they will go, or to whom, or in what quantities. One cargo of oil may remain in the tanks for three months, or it may be broken up and part of it may leave in one week and the rest of the cargo in three

months, or it may move away in a solid trainload of tank cars, or it may be broken up into a hundred or five hundred different shipments to various interior points. To say that under these circumstances the intrastate movement out of the tanks is a continuation of the inward bound movement in the vessels violates the facts.

The Oil Company submits the following principles deducted from the facts:

FIRST: The Oil Company's business in Florida is a local business and the traffic rates to be applied to such a business are the intrastate rates and not the interstate rates.

SECOND: The indefinite stoppage in the tanks is for the *bona fide* business purposes of the Oil Company and not incident to the transportation, and the further movement within the State is state commerce.

THIRD: The traffic, although from outside the State, having come to a state of rest in the State of Florida in such a manner as to form part of the stock in trade of the Oil Company there, the further movement within the State is state commerce and not interstate commerce.

FOURTH: The movement to the storage tanks at the ports is a gathering movement made to serve a local business but the final movement does not start until the contract of carriage is made with the Railroad Company and shipments delivered to that Company. The final movement within the State is an intrastate movement.

FIFTH: A general intention upon the part of the Oil Company of shipping all or part of its products from the ports to interior points in Florida does not make the final movement a part of the original movement, because the only known destination at the time of the original movement is the Florida port. The movement thereafter is uncertain up to the time a contract of shipment is made with the Railroad Company. The outbound intrastate movement from the tanks is definitely and clearly separated from the inbound movement into the tanks.

Finally, it is submitted that the Oil Company's business in Florida is a local business and that the transportation rates to serve that business should be the state rates.

It is submitted that in so far as the decree of the Circuit Court of Appeals applied the intrastate rates it should be affirmed, but that in so far as it applied the interstate rates to the traffic it should be reversed.

Respectfully submitted,

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CHARLES ELMORE CROPLEY
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In the Supreme Court of the United States

OCTOBER TERM, 1927

No. 176

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*,

vs.

STANDARD OIL COMPANY OF KENTUCKY.

No. 177

STANDARD OIL COMPANY, Incorporated in Kentucky, *Petitioner*,

vs.

ATLANTIC COAST LINE RAILROAD COMPANY.

BRIEF OF COUNSEL FOR THE STATE OF FLORIDA AND ITS RAILROAD COMMISSION IN CASES No. 128 AND 129 AS AMICI CURIAE

FRED H. DAVIS,
Attorney General.

THEODORE T. TURNBULL,
General Counsel to Railroad Commission.

GEORGE C. BEDELL,

AS AMICI CURIAE.

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In the
Supreme Court of the United States

ATLANTIC COAST LINE RAILROAD COMPANY, *Petitioner*, vs. STANDARD OIL COMPANY OF KENTUCKY, *Respondent*.	No. 872. October Term, 1926.

STANDARD OIL COMPANY, a Corporation of Kentucky, *Petitioner*, vs. ATLANTIC COAST LINE RAILROAD COMPANY, *Respondent*.	No. 873. October Term, 1926.

BRIEF OF COUNSEL FOR THE RESPONDENTS IN CASES No. 128 AND No. 129, OCTOBER TERM, 1927, AS *AMICI CURIAE*.

This brief is filed in the interest of the State of Florida and its Railroad Commission, respondents in the cases of Seaboard Air Line Railway Company, Petitioner, vs. State of Florida *ex rel*, etc., and Atlantic Coast Line Railroad Company, Petitioner, vs. State of Florida *ex rel*, etc., Nos. 128 and 129.

Those cases arose upon petitions for writ of mandamus to enforce the rate prescribed by State

authority for the transportation of petroleum and petroleum products from Jacksonville, Tampa and Port Tampa to divers points within the State of Florida. Those rates are the same rates involved in the case at bar.

The mandamus cases were instituted by the Railroad Commission in the interest of the public generally, and the case made by the pleadings was not confined to the operation of any one oil company, but extended to the business of the entire industry at the ports mentioned and throughout the State. It was upon the case made in those pleadings that the judgment of the Supreme Court of Florida awarding a peremptory writ of mandamus was based.

Admittedly a very large portion of the commodities in question are brought to the ports in ships—some are brought by rail. In either event they are placed in storage tanks or warehouses and from these tanks and warehouses they are distributed by rail and tank wagons to the bulk marketing stations, retailers and consumers throughout the State, and in some instances to points beyond the State.

In the case at bar, a witness for the railroad company testified as follows:

> "The flow of oil through the tanks is practically continuous. They are loading tank cars through the receiving tanks continuously throughout every day in the year, except some Sundays. The Standard Oil Company does not do that on every Sunday; but it is practically continuous from the tanks. Frequently oil is

> coming out of the tanks at the same time that it is being pumped into them by the ship." (Rec. p. 128).

The witness speaks with some generality of statement. An accurate statement of the use of the tanks is contained in the elaborate compilations set forth in the record, pages 63 et seq. The testimony of the witness does not tell the whole story. It may be true that the cars are often drawing petroleum from the tanks at the very time that a ship is pumping petroleum into the tanks. It must be so unless all other work were suspended during the unloading of the ship. But the essential fact is that immense quantities of petroleum are from time to time accumulated in these tanks to serve the exigencies of the market.

Thus of fuel oil there was on hand in Port Tampa on December 31, 1924, 58,837 barrels, and on April 30, 1925, 105,084 barrels, and at the end of December, 1925, 33,872 barrels. Of gasoline there was on hand at Port Tampa on the 31st of December, 1924, 75,107 barrels; on September 30, 1925, but 11,277 barrels, and on the 31st of December, 32,735 barrels. Of fire proof oil there was on hand at Port Tampa on December 31, 1924, 16,709 barrels; on September 30, 1925, 260 barrels, and on December 31, 1925, 3,890 barrels. (Rec. pp. 63 to 67). Similar variations are shown for Jacksonville. (Rec. pp. 77 to 81).

> "We hold these products subject to the demands of our customers and business. The volume of business shifts with the seasons of the year and in the different departments." (Rec. p. 62).

In each of the cases the question to be determined is whether the rates governing this rail movement from the tanks and warehouses to the interior points within the State are controlled by the law of the State. Until June 15th, 1923, the State rates were generally recognized. They are still recognized by the Louisville & Nashville Railroad, the Southern Railway Company and the Florida East Coast Railway Company. (Rec. p. 114).

It appears from the record in this case that a very large part of the fuel oil is moved in tank cars to the larger consumers under annual contracts to supply given quantities, or requirement contracts. (Rec. pp. 120 to 123). The Court of Appeals found that 95% of the fuel oil distributed from Port Tampa is so sold, and held shipments of fuel oil from Port Tampa to interior points not subject to the State rate. (Rec. p. 134). It held as to the fuel oil distributed from Jacksonville that the record was not sufficient and remitted the case for further investigation. (Rec. p. 139).

A large part of the gasoline and kerosene is transported by rail from the tanks to the bulk marketing stations at divers points, 123 in number. A smaller part is distributed among the retailers by tank wagons. The Court of Appeals found that at Jacksonville 13% of the gasoline and kerosene received into the tanks is used locally at Jacksonville and never gets any further. It therefore decided that all gasoline and kerosene distributed from Jacksonville was subject to the State rate. (Rec. p. 139). It held, as to the gasoline and kerosene distributed

from Port Tampa, that the gasoline and kerosene was not subject to the State rate.

Lubricating oils are distributed from Jacksonville and Tampa by tank wagons, or in barrels or other small containers, and were held by the Court of Appeals to be subject to the State rate.

In the mandamus cases, the case was considered in its larger aspect and not with respect to particular percentages. In this view of the case, Ellis, J., says:

> "The cause and purpose of the delay at Jacksonville and Tampa of the petroleum and petroleum products of the oil companies is the determining factor by which it may be determined whether the reshipment of the products at those points from storage tanks and warehouses is or is not a continuation of the original interstate movement.
>
> "* * * From anything averred to the contrary, the oil companies retain the ownership of all the products arriving at the ports; that storage there is for their convenience and subsequent disposition of the commodity; that all, or any portion, of it may be resold in fact and diverted from the original destination of it; that it is held there for the profit of the companies by sales of a larger portion, or all of it, to customers with whom at the time of original shipment they have no contract.
>
> "It affirmatively appears from the allegations of the writs and the averment of the answers that actual transportation of the petroleum and petroleum products ceases at Tampa and Jacksonville; that the warehouses and storage tanks are the property of the oil

companies; that when placed in the storage tanks and warehouses of the oil companies it is withdrawn from the carriers which transported it to Florida; that subsequent movements are the result of new contracts of carriage with the respondents and the time of such subsequent movements is indefinite and dependent upon the convenience and pleasure of the oil companies; that an indeterminate quantity of the products (fol. 67), brought in any one shipment to Florida may be disposed of by the companies to persons other than those for whom the particular shipment was originally intended.

"In this view of the facts we are of the opinion that the petroleum and petroleum products stored in storage tanks and warehouses at Jacksonville and Tampa come to rest there; that the interstate movement ceases and that subsequent shipments of it to points within the State are intrastate movements and subject to the rates prescribed by the relators." (Rec. in cases Nos. 128 and 129, p. 61).

These same facts are shown by the testimony in the case at bar:

"* * * We do not use any particular tanks for products going to any particular section. All of our gasoline tanks are lumped, and all of our refined oil tanks are lumped, etc. When any particular cargo of either gasoline or refined oil is pumped into a tank, nobody knows where it is going." (Rec. p. 90).

In the course of its opinion in the case of Atlantic Coast Line Railroad Company and Seaboard Air Line Railway Company vs. Standard Oil Company

of New Jersey, 12 Fed. (2nd) 541-544, the Court of Appeals for the *Fourth Circuit* says:

> "* * * We regard it as relatively unimportant that a part of the oil and gasoline remained in Wilmington, that a large percentage thereof was shipped to substations of complainant instead of direct to purchasers, that the shipments from Wilmington to the substations were directed by the manager of the Charlotte Branch who had charge of the Wilmington storage plant, or that the shipments to tank car customers were in some instances made under continuing contracts. The determining factors in the case are that the cargo shipments from without the State ended at Wilmington; that the large quantities of oil and gasoline brought in by the tank steamers, came to rest and lost their identity there in complainant's storage tanks, and were mingled with its general stock; and that the shipments from Wilmington were made as a distribution from the general stock and not as a mere means of continuing the transportation begun with the tank steamers. These shipments were, therefore, independent movements. They cannot be distinguished in principle from shipments made by the owner of a chain of stores, who ships a carload of shoes from without the State to a central warehouse, and later ships them out by the box to his various stores as the needs of his trade require. In such case the governing factor is not the fact that the bulk of the car is broken, or that there is a new billing of the goods, or that the merchant may or may not have intended to reship them, but the fact that the shipments out constitute new movements, which are separate and distinct from the movement to the warehouse."

Cereals and their products move in a seasonly continuous flow from the farms to the consumers' tables. But it would be whimsical to consider the commodity a subject of Federal control as it passes through its course from the farm to the consumer's table; while it rests in the farmer's barn, in the grain dealer's elevator, the storage bins at the mill, the jobber's warehouse, the retailer's store or the baker's store room.

"Commerce with foreign nations and among the several States" includes not only traffic but also transportation by land and water, and every means and appliance directly employed in carrying it on. But the essential thing is traffic, and the other things are included because they are incidental. Where the transaction in hand is merely incidental to the traffic between the States it is subject to Federal control. Where it is in substance an incident of distribution within the State, it is not a concern of the Federal Congress.

This is pointed out in the opinion of the United States Circuit Court of Appeals for the *Fourth Circuit* in Atlantic Coast Line R. Co.—Seaboard Air Line Ry. Co. vs. Standard Oil Co. of New Jersey, 12 Fed. (2nd), 541, 547 and 548:

> "Here the journey of the cargo of oil as a cargo had ended. It had come to rest at a point of distribution, and its identity had been lost; and while, as said in the Settle case, further movements of a large part of the oil constituting the cargoes was contemplated, it was contemplated by way of distribution, and not as a con-

tinuation of the original movement, as in the cases relied on by defendants.

"In Champlain Co. vs. Brattleboro, *supra,* Chief Justice Taft distinguished a temporary interruption of an interstate journey from transportation to a central point preparatory to shipment in interstate commerce such as was dealt with in *Coe* vs. *Errol,* 116 U. S. 517; and, in the course of his opinion, he said:

> " 'If the interruptions are only to promote the safe and convenient transit, then the continuity of the interstate trip is not broken. * * * Interstate continuity of transit is to be determined by a consideration of the various factors of the situation. Chief among these are the intention of the owner, the control he retains to change destination, the agency by which the transit is effected, the actual continuity of the transportation, and the occasion or purpose of the interruption.' "

The distinction between transportation to the point of distribution and transportation beyond has been uniformly recognized in decisions of his Court.

> "The instances are many where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when the original movement began. Shipments to and from distributing points often present this situation, if the applicable tariffs do not confer reconsignment or transit privileges." 260 U. S. 173.

Thus in Chicago, Milwaukee and St. Paul Railway Company vs. State of Iowa, 233 U. S. 334 and

342, in which was involved the validity of an order of the State Railroad Commission requirng the handlng of coal out of Davenport in the very cars in which it was brought from outside the State:

> "The Railroad Commission held that the transportation desired from Davenport was a purely intrastate service, saying: 'Under the admitted facts, the City of Davenport became a distributing point for coal shipped by the consignor. The certainty in regard to the shipments of coal ended at Davenport. The point where the same was to be shipped beyond Davenport, if at all, was determined after the arrival of the coal at Davenport. The coal was under the control of the consignee and he could sell it in transit or at Davenport or reconsign it to a point on respondent's railway, or any other railway, at his own discretion.' Upon the trial of the present suit in the State Court, the State introduced in evidence the proceedings, decision and order of the Commission, and without further evidence both parties rested. The Supreme Court of the State took the same view of the facts that the Commission had taken and accordingly held that the shipments were intrastate. The Court said that the facts showed that the coal was originally consigned to the coal company in Davenport, that it was there held until sales were made, that the consignee had taken delivery, paying the freight to the initial carrier and assuming full control." 233 U. S. 343.

This Court in its opinion said further:

> "It is undoubtedly true that the question whether commerce is interstate or intrastate must be determined by the essential character

of the commerce and not by mere billing or forms of contract. *Ohio Railroad Commission* vs. *Worthington*, 225 U. S. 101; *Texas & N. O. R. R. Co.* vs. *Sabine Tram Co.*, 227 U. S. 111; *Railroad Commission of Louisiana* vs. *Texas & Pacific Rwy. Co.*, 229 U. S. 336. But the fact that commodities received on interstate shipments are reshipped by the consignees, in the cars in which they are received to other points of destination, does not necessarily establish a continuity of movement or prevent the reshipment to a point within the same State from having an independent and intrastate character. *Gulf, Colorado & Santa Fe Rwy. Co.* vs. *Texas*, 204 U. S. 403; *Ohio Railroad Commission* vs. *Worthington*, 225 U. S. 101, 109; *Texas & N. O. R. R. Co.* vs. *Sabine Tram Co.*, 227 U. S. 111, 129, 130. The question is with respect to the nature of the actual movement in the particular case; and we are unable to say upon this record that the State Court has improperly characterized the traffic in question here." 233 U. S. 343, 344.

Thus in *Gulf, Colorado and Santa Fe Rwy. Co.* vs. *Texas*, 204 U. S. 403, a car load of corn was shipped from Hudson, South Dakota, to Texarkana, Texas. While in transit it was sold for delivery at Goldthwaite, Texas, and the corn having reached Texarkana was shipped out five or six days later under original seals and without breaking packages. The movement from Texarkana to Goldthwaite was held to be subject to the State rate.

In *Baltimore*, etc., *R. R. Co.* vs. *Settle*, 260 U. S. 173, this Court said:

"The decision in *Gulf, Colorado & Santa Fe*

> *Ry. Co.* vs. *Texas*, 204 U. S. 403, relied upon by defendants in error, is entirely consistent with these later decisions of this Court, although some expressions in the opinion are not."

Indeed, it was made the basis of the decision in the case of Bracht vs. San Antonio etc. Ry. Co., 254 U. S. 489.

In General Oil Co. vs. Crain, 209 U. S. 211, 213, the crucial facts appear in the following paragraph from the statement by the Court:

> "* * * For some years plaintiff has been engaged in business at Memphis, and has made that city not only a place of business at which to sell oil to the citizens and residents of Tennessee, but also has made it one of its distributing points to which its oils are shipped from Pennsylvana and Ohio in tank cars, from which cars the oils are unloaded into various tanks, barrels and other receptacles for the purpose of being forwarded to its customers in Arkansas, Louisiana and Mississippi, in which States it has many regular customers from whom it always has on hand many unfilled orders for oil to be delivered as soon as possible or convenient."

This oil was held to be subject to the inspection laws of the State of Tennessee.

The rules of the Interstate Commerce Commission are in accord with the decision of the Circuit Court of Appeals for the Fourth Circuit and the decision of the Supreme Court of Florida.

> Washington Dehydrated Feed Co. vs. Great Northern R. Company, decided Sept. 22, 1925, 102 I. C. C. 363.

Fuller & Co. vs. Southern Pacific Co., 128 I. C. C. 199.

In the case of the International Agricultural Corporation vs. The Director General, 60 I. C. C. 726, the defendants for reasons sufficient to themselves conceded the jurisdiction of the Interstate Commerce Commission.

The decision of the Circuit Court of Appeals for the *Sixth Circuit*, in the case at bar, overlooks a distinction pointed out in the opinion of the Circuit Court of Appeals for the *Fourth Circuit*, in Atlantic Coast Line R. Co.—Seaboard Air Line Ry. Co. vs. Standard Oil Co. of New Jersey (12 Fed. (2nd), 541, 547 and 548), namely:

In a certain class of cases the traffic in commodities was directly involved. In another class of cases the incidental transportation of the commodities was alone involved.

In the opinion of the Circuit Court of Appeals for the *Fourth Circuit* the Court said:

> "* * * That there is a difference in the principles applied to the two classes of cases, is apparent at a glance. In the one case it is the essential nature of the business which governs; in the other it is the essential nature of the particular transportation involved. If a group of merchants buying and selling goods in interstate commerce should conspire to raise prices, they would unquestionably be amenable to prosecution under the Sherman Act; but this would not authorize a transportation company to charge interstate rates on a shipment of goods which one of the merchants might make to an-

other within the same State. As said by Judge Sibley in *A. C. L. R. R.* vs. *R. R. Commission of Georgia*, 281 Fed. 321:

> "'While in the business of buying and selling goods, interstate commerce may reach all the way from first purchase to final delivery, interstate transportation for the purpose of determining the rate to be charged may have narrower limits.' Compare *Loewe* vs. *Lawlor*, 208 U. S. at 301 with *Arkadelphia Milling Co.* vs. *St. Louis S. W. Ry. Co.*, 249 U. S. at 151."

PRINCIPAL CASES RELIED ON BY PETITIONERS

In the case of Texas etc. R. R. Co. vs. Sabine Tram Company, 227 U. S. 111, referred to as the Sabine Tram case, it was perfectly apparent that the transfer at Sabine was but a step in the unbroken movement of the lumber to foreign ports.

> "Upon the arrival of the lumber at Sabine it was carried without delay beyond and unloaded into the water in reach of the ship's tackle." 227 U. S. 126.

In Baltimore & Ohio R. R. Co. vs. Settle, 260 U. S. 166, the transfer at Oakley was obviously a device to evade the interstate rates. "The shippers had no place of business at Oakley. The delivery there was the completion of one stage in the contemplated movement to Madisonville." 260 U. S. 169.

> "The mere fact that cars received on inter-

state movement are reshipped by the consignee after a brief interval to another point, does not, of course, establish an essential continuity of movement to the latter point. The reshipment, although immediate, may be an independent intrastate movement. The instances are many where a local shipment follows quickly upon an interstate shipment and yet is not to be deemed part of it, even though some further shipment was contemplated when the original movement began. Shipments to and from distributing points often present this situation, if the applicable tariffs do not confer reconsignment or transit privileges." 260 U. S. 173.

And in *R. R. Commission* vs. *Worthington*, 225 U. S. 101, there was direct attack upon a State Commission rate that actually covered the trimming and distributing in the hold of vessels destined for ports without the State.

> "By every fair test the transportation of this coal from the mine to the upper lake ports is an interstate carriage, intended by the parties to be such, and the rate fixed by the Commission which is in controversy here is applicable alone to coal which is thus, from the beginning to the end of its transportation, in interstate carriage, and such rate is intended to and does cover an integral part of that carriage, the transportation from the mine to the Lake Erie port, the placing upon the vessel and the trimming or distributing in the hold, if required, so that the vessel may complete such interstate carriage." 225 U. S. 108-109.

In *Pennsylvania R. R.* vs. *Clark Coal Co.*, 238 U. S. 468, the question involved was car distribu-

tion for the transportation of coal. "* * * for the purpose of filling contracts with purchasers in other States, coal is delivered f. o. b. at the mines for transportation to such purchasers."

In *Stafford* vs. *Wallace*, 258 U. S. 495, the question arose upon the Stock Yards Act, "The only question" being "whether the business done in the stockyards between the receipt of the live stock in the yards and the shipment of them therefrom is a part of interstate commerce, or is so associated with it as to bring it within the power of national regulaton." 258 U. S. 517.

In the case of *Douglas Co.* vs. *Southern Railway Co.*, 216 Ill. Apps. 148, the controlling consideration seems to have been that with one unimportant exception the shipments were in the course of transit to the purchasers until final delivery to the purchasers, and that "plaintiff maintained no place of business in Charleston nor did it have a warehouse there." 216 Ill. App. 153-154.

In the case at bar the Florida plants were in reality distributing plants. The movement from those plants was in its essence local.

Respectfully submitted,

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